

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3492 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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ASLAM ANWARKHAN PATHAN

Versus

STATE OF GUJARAT

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Appearance:

MR HR PRAJAPATI for Petitioner

MR. JOSHI, AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/11/1999

ORAL JUDGEMENT

1. The petitioner came to be detained by an order dated 12th February 1999 passed by Commissioner of Police, Ahmedabad in exercise of powers under sub-section [2] of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 [for short, 'the PASA Act' ].

2. The detaining authority recorded in the grounds for detention that an offence under the Bombay Prohibition Act came to be registered against the

petitioner on 6th February 1999. It is also recorded on the basis of certain statements recorded by the proposing authority and verified by the concerned authority that certain incidents took place on 31st January 1999, 24th January 1999 and 1st February 1999, about which no offence is registered, but the witnesses have narrated the incidents to indicate that the petitioner is involved in bootlegging activities and in order to facilitate his activities, he has used force and intimidation causing disturbance in Public Order. The detaining authority therefore felt satisfied on verification of the witnesses that the witnesses have a genuine fear from the petitioner and therefore, the detaining authority claimed privilege u/s 9[2] of the PASA Act.

3. The petitioner challenged the detention on various grounds stated in the petition.

4. Mr. Prajapati, learned advocate appearing for the petitioner has however restricted his arguments to the ground that the petitioner was in custody when the detention order was passed and there was no cogent material with the detaining authority to pass the detention order when the petitioner was in custody and that, there was no likelihood of the petitioner being released on bail in near future. The subjective satisfaction of the detaining authority was, therefore, vitiated for want of cogent material. Mr. Prajapati has pressed in service the decision of a Division Bench of this Court rendered in Letters Patent Appeal No. 1056/99 in Special Civil Application No. 8650/98 in case of Yunusbhai Hasanbhai Ghanchi v/s District Magistrate.

5. Mr. Joshi, learned AGP has opposed this petition and he submitted that the detaining authority has considered the aspects of the petitioner being in custody and likelihood of his release on bail.

6. However, on perusal of the detention order, such consideration is not found to have been recorded by the detaining authority. An attempt is made to explain in affidavit in reply in by stating as under :-

"I say that I was aware of the fact, at the time of passing the order of detention, that the petitioner was in custody but if applies for bail and if the same is granted by the Hon'ble Court, it is likely that he would continue his antisocial and bootlegging activities."

7. The detaining authority has not considered that

the detaining authority could have opposed the grant of bail and if bail is granted, the authority concerned could have approached the court for cancellation of bail. The availability of these two recourse has not been considered by the detaining authority and therefore, in light of the decision in the case of Yunusbhai Hasanbhai Ganchi [supra] relied upon by learned Advocate Mr. Prajapati, the detention order would be vitiated, as has been observed in the said decision. The petition therefore deserves to be allowed on this count alone.

8. The petition is therefore allowed. The impugned order of detention passed by the Commissioner of Police, Ahmedabad, dated 12th February 1999 in respect of the petitioner Aslam Anwarkhan Pathan, is hereby set aside. The petitioner be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly, with no order as to costs.

[ A.L.DAVE, J. ]

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